



VIA ELECTRONIC FILING

August 8, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Comments – Second Further Notice of Proposed Rulemaking – WT Docket No. 02-55

Dear Ms. Dortch:

Pursuant to the Second Further Notice of Proposed Rulemaking¹ in the above-referenced proceeding, I hereby am submitting our Comments with respect to (1) an Alternative Rebanding Plan for Puerto Rico and the U.S. Virgin Islands and (2) the Transition Administrator's ("TA") Proposal for Adoption of an Alternative 800 MHz Band Plan and Negotiation Timetable for Puerto Rico and the U.S. Virgin Islands filed on October 19, 2007.

Pursuant to Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b), this letter and attachment are being filed electronically for inclusion in the public record in the above-captioned proceeding. Please let me know if there are any questions regarding this matter.

¹ In the Matter of Improving Public Safety Communications in the 800 MHz Band, *Second Further Notice of Proposed Rulemaking*, WT Docket No. 02-55, DA 08-1530 (released June 30, 2008)("Second FNPR").

Sincerely,

/s/ Charles M. Austin

Charles M. Austin, President

Attachments

cc: The Honorable Kevin Martin
The Honorable Michael J. Copps
The Honorable Jonathan S. Adelstein
The Honorable Deborah Taylor Tate
The Honorable Robert M. McDowell
Senior Legal Advisor Michelle Carey
Senior Legal Advisor Rick Chessen
Senior Legal Advisor Scott Bergmann
Legal Advisor Amy Blankenship
Senior Legal Advisor Angela Giancarlo

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Improving Public Safety Communications in the)	WT Docket No. 02-55
800 MHz Band)	
)	
New 800 MHz Band Plan for Puerto Rico)	

COMMENTS

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SUMMARY

Pursuant to the 800 MHz *Second Further Notice of Proposed Rulemaking*, Preferred Communication Systems, Inc. (“Preferred”) submits today its Comments both with respect to (1) its Alternative Rebanding Plan for Puerto Rico and (2) the Transition Administrator (“TA”)’s “Proposal for Adoption of an Alternative 800 MHz Band Plan and negotiation Timetable for Puerto Rico and the U.S. Virgin Islands Economic Area” filed with the Federal Communications Commission (“FCC” or the “Commission”) on October 19, 2007.

To comply with the guidelines set forth by the FCC in both the 800 MHz *Second Further Notice of Proposed Rulemaking*¹ and 800 MHz *Second Memorandum Opinion and Order*² and to minimize the loss of Economic Area (“EA”)-licensed Channels by ESMR Band and ESMR Band-Eligible licensees³, Preferred proposes that Commission adopt the following Alternative Rebanding Plan for Puerto Rico:

First, Preferred’s one hundred twenty-five (125) 800 MHz SMR General Category (“GX”) EA-Licensed Channels (D-F Frequency Blocks) and its Site-Licensed Channels would be moved to the former NPSPAC Channels (new Channels 711-830 or 821.0125-823.9875 MHz/866.0125-868.9875 MHz).

¹ Improving Public Safety Communications in the 800 MHz Band, New 800 MHz Band Plan for Puerto Rico, WT Docket No. 02-55, *Second Further Notice of Proposed Rulemaking*, DA 08-1530 (June 30, 2008)(“800 MHz Second FNRR”).

² Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Second Memorandum Opinion and Order*, 22 FCC Rcd 10467 (2007)(“800 MHz Second MO&O”).

³ “ESMR Band-Eligible” licensees are defined herein as EA Licensees that did not construct a “High Density Cellular System” by November 22, 2004. *See, e.g.*, 800 MHz MO&O, at ¶ 33; TA, WT Docket No. 02-55, Ex Parte Notification, filed on October 19, 2007, at 2; 47 C.F.R. § 90.7.

Second, Preferred's five (5) remaining EA-Licensed Channels, six (6) 800 MHz SMR paired Site-Licensed frequencies covering the Western Half of Puerto and fifteen (15) such Channels covering the Eastern Half of the Island and Sprint Nextel's twenty-five (25) GX EA-Licensed Channels (FF Frequency Block) would be moved to the thirty (30) Channels immediately below new Channel 511, or new Channels 481-510 (815.2625-815.9875 MHz/ 860.2625-860.9875 MHz).⁴ Preferred's five (5) EA-Licensed Channels would be moved to new Channels 506-510 (815.8875-815.9875 MHz/860.8875-860.9875 MHz). The present GX FF Frequency Block (new Channels 236-260) would be moved intact to new Channels 481-505 (815.2625-815.8625 MHz/860.2625-860.9875 MHz).⁵

⁴ Since two of Preferred's Site-Channels cover both the Western and Eastern halves of Puerto Rico, its total additional EA-Licensed Channels would be 144 rather than 146. Under the FCC's guidelines set forth in the *800 MHz Second MO&O*, Sprint Nextel will receive no more spectrum in the ESMR Block than it currently holds. As a result, under Preferred's Alternative Rebanding Plan Sprint Nextel receives the same number EA-Licensed Channels but on a geographic "footprint" basis only.

⁵ Preferred believes this approach is appropriate since it involves minimal disruption to both the present licensing scheme in the Upper 200 Channels and GX FF Frequency Block in the Puerto Rico EA market, maintains the total number of EA-Licensed Channels for both Preferred and Sprint Nextel and follows the FCC's generally applicable Rebanding Plan with respect to the treatment of EA- and Site-Licensed spectrum.

In the 800 MHz Memorandum Opinion and Order, the FCC indicated that if North Sight had not constructed a cellular system in this EA market prior to November 22, 2004, it would have been required to relocate its EA-Licensed Channels to the Interleaved and Expansion Band Channels. *See Improving Public Safety Communications in the 800 MHz Band, Memorandum Opinion and Order*, WT Docket No. 02-55, 20 FCC Rcd 16015, ¶¶ 13-15, 18-19 & 25 (2005), as amended by Erratum, 20 FCC Rcd 18970 (PSCHD, WTB 2005) ("800 MO&O"), at ¶ 31. While North Sight was apparently operating a "cellular" architecture system using Motorola's iDEN technology on November 22, 2004, it was not operating an "ESMR" or high density cellular system by such date. *See North Sight Communications, Inc. and Communications & Industrial Electronics Corp., Request for Clarification*, WT Docket No. 02-55, filed May 4, 2005, at 2-3; 800 MHz MO&O, at ¶ 8.

Third, North Sight Communications, Inc. (“North Sight”), the holder of the C Frequency Block EA Authorization (120 Channels), Sprint Nextel Corp. (“Sprint Nextel”), the holder of the B Frequency Block EA Authorization (60 Channels), and High Tech Communications Services, Inc., the holder of the A Frequency Block EA Authorization (20 Channels), respectively would remain on their present EA-Licensed Channels but upon an unencumbered or “clean” and contiguous basis.⁶

In 47 C.F.R. § 90.7 an “800 MHz Cellular System” is defined as

“In the 806-824 MHz/851-869 MHz band, a system that uses multiple, interconnected, multi-channel transmit/receive cells capable of frequency reuse and automatic handoff between cell sites to serve a larger number of subscribers than is possible using non-cellular technology.”

An “800 MHz High Density Cellular Systems is defined in that Section as “In the 806-824 MHz/851-869 MHz band, a high density cellular system is defined as a cellular system which:

- (1) has more than five overlapping interactive sites featuring hand-off capability; and
- (2) any one of such sites has a antenna height of less than 30.4 meters (100 feet) above ground level with an antenna height above average terrain (HAAT) of less than 152.4 meters (500 feet) and twenty or more paired frequencies.”

To our knowledge, Sprint Nextel has yet to construct either a “800 MHz Cellular” or “800 MHz High Density Cellular System” in this EA market. Presumably, the Commission’s standards for determining the eligibility of an Upper 200 Channels EA Authorization holder to remain in the ESMR portion of the PLMRB apply equally to Sprint Nextel. However, for purposes of our Alternative Rebanding Proposal, we would recommend that Sprint Nextel’s B Frequency Block EA-Licensed Channels be allowed to remain in the ESMR Block conditioned upon its acceptance of Preferred’s Alternative Rebanding Proposal. If Sprint Nextel is allowed to retain its B Frequency Block EA-Licensed Channels in the ESMR portion of the PLMRB, it presumably would be subject to the FCC’s conditions set forth in the 800 MHz MO&O at ¶ 26. Upon Sprint Nextel’s failure to meet such conditions, Preferred would maintain that Sprint Nextel’s sixty (60) EA-Licensed Channels should revert automatically to Preferred. *Id.* at ¶ 27.

⁶ North Sight therefore would hold new Channels 591-710 (818.0125-820.9875 MHz/863.0125-865.9875). Sprint Nextel would hold new Channels 531-590 (816.5125-

Fourth, the 800 MHz SMR Trunked System (“YX”) Site-Licensed Channels within the Upper 200 Channels would be moved downward to the Guard Band and Interleaved Channels on a geographic “footprint” basis only. All of these Site Licensees would be provided at least comparable facilities.⁷

Fifth, Preferred’s Alternative Rebanding approach would establish a one MHz Guard Band beginning at new Channel 480 (815.2375/MHz/860.2375 MHz) and moving downward to new Channel 441 (814.2625 MHz/859.2625 MHz). Preferred’s Alternative Rebanding approach therefore expands the ESMR portion of the Band by seventy (70) Channels or 3.5 MHz.

Sixth, to accommodate such expansion of the ESMR portion of the Band, Preferred’s Alternative Rebanding approach eliminates the Expansion Band and decreases the Interleaved Channels from 240 to 210 Channels.⁸ However, all Site-Licensed Channels moving downward from old Channels 401-600 will hold an identical number of total Channels and receive at least comparable facilities.

Seventh, Public Safety licensees in the Interleaved and Expansion Band Channels would be moved downward to new Channels 1-230. All of these licensees would receive comparable facilities. The relocation of these Public Safety licensees both would minimize, if not eliminate, interference from incompatible architecture systems and

817.9875 MHz/861.5125-862.9875 MHz). High Tech would hold new Channels 511-530 (816.0125-816.4875 MHz/861.0125-861.4875 MHz).

⁷ Under Preferred’s Alternative Rebanding Proposal, the Upper 200 Channels’ EA Authorization holders’ Site-Licensed Channels within a Frequency Block held by another EA Authorization holder (for example, Sprint Nextel’s Site-Licensed Channels within North Sight’s C Frequency Block EA Authorization) would be relocated to the Guard Band and then the Interleaved Channels on a geographic “footprint” basis only.

⁸ With the relocation of all Public Safety licensees from the Interleaved Channels to new Channels 1-230, Preferred believes that much like in the Southeast Region of the U.S. the importance of an Expansion Band is minimized.

provide the seventy (70) additional Channels necessary to increase the ESMR portion of the PLMRB and accommodate the ESMR and ESMR-Eligible Licensees' spectrum holdings in Puerto Rico.

Eighth, the 800 MHz SMR GX Site-Licensed Channels within old Channels 1-120 held by Site Licensees would be moved upward to the Interleaved Channels beginning with new Channel 231 on a geographic "footprint" basis only.⁹ Such Channels held by North Sight would be moved to the new Guard Band on a clean and contiguous EA-market Licensed Basis. All of these licensees would receive at least comparable facilities.

Ninth, Business and Industrial/Land Transportation licensees holding YX Site-Licensed Channels within old Channels 121-370 (new Channels 231-480) would remain on their present frequencies. Such licensees holding Site-Licensed Channels within old Channels 371-400 (new Channels 481-510) would be relocated downward on a geographic "footprint" basis only. All of these licensees would receive comparable facilities.

Finally, Public Safety licensees presently in the old NPSPAC Channels would be moved downward 15 MHz on a geographic "footprint" basis only. All of these licensees would receive at least comparable facilities.

Since Preferred holds five of the six 800 MHz SMR General Category Frequency Blocks (125 of the 150 total contiguous Channels) and numerous site licenses that would need to be relocated to the ESMR portion of the Band in exchange with Public Safety licensees holding a total of 120 25 kHz bandwidth equivalent Site-Licensed Channels

⁹ Under Preferred's Alternative Rebanding approach, the Interleaved Channels would begin at new Channel 231 and extend to new Channel 440 (809.0125-815.2375 MHz/854.0125-860.2375 MHz).

within the former NPSPAC Channels,¹⁰ in the Puerto Rico EA market it, rather than Sprint Nextel, holds the dominant 800 MHz spectrum position. Preferred therefore believes that it should be the party to bear the financial responsibility for paying all reasonable costs directly related to the 800 MHz reconfiguration process in this EA market moving forward.¹¹ In exchange for assuming such responsibility, it would propose to receive an assignment of 10 MHz of Sprint Nextel's 1.9 GHz Band nationwide license for the Puerto Rico EA market.

As Preferred previously has maintained, it does not believe that the Commission has the legal authority to require 800 MHz licensees to reband involuntarily due to Sprint Nextel's inability to provide relocated licensees comparable facilities in numerous markets.¹² Here Preferred is proposing an alternative rebanding approach that is voluntary and would be based upon its negotiating and executing voluntary frequency rebanding agreements with all of the affected 800 MHz licensees in the Puerto Rico EA market.¹³ Preferred would request that the FCC afford it sixty (60) days from the date of an effective Order to secure such voluntary Frequency Reconfiguration Agreements.

¹⁰ In this EA market Sprint Nextel cannot facilitate such exchange since it lacks both 800 MHz SMR EA- and Site-Licensed General Category Channels and Site-Licensed B/ILT Channels.

¹¹ Preferred would propose to collateralize its financial commitment to pay all reasonable relocation costs by providing the FCC a standby letter of credit for an amount to be negotiated with the Commission. Such letter of credit would be issued by one or more generally recognized commercial or investment banking institutions.

¹² See Preferred Communication Systems, Inc., Request for Stay, WT Docket No. 02-55, filed on November 9, 2005 and Preferred, Letter, WT Docket No. 02-55, filed on October 17, 2005.

¹³ Upon the Commission's approval of Preferred's Alternative Rebanding approach, Preferred would retain Concepts To Operations, Inc. to manage the voluntary rebanding of the Puerto Rico EA market. It also immediately would begin contacting 800 MHz licensees in Puerto Rico and the U.S. Virgin Islands to execute voluntary frequency reconfiguration agreements.

Preferred would propose to track the rebanding timeline for Sprint Nextel in the continental U.S.¹⁴

In responding to the Commission's Second Memorandum Opinion and Order, the TA sought in its own words, to "conform the proposed Puerto Rico and USVI band plan to the U.S. band plan to the maximum extent possible."¹⁵ According to the TA it also was guided by the following considerations:

1. minimal disruption of 800 MHz licensees during reconfiguration;¹⁶
2. no incumbent licensee in the Puerto Rico EA market that already has been reconfigured would face additional rebanding except an EA licensee seeking to move to the ESMR portion of the PLMRB;¹⁷ and
3. adequate spectrum would be available for resolving combiner channel spacing issues that could arise and modest future growth for Site Licensees.¹⁸

According to the TA the Channels reserved by the FCC's Rebanding Orders for Non-ESMR and Non-ESMR Eligible and Non-NPSPAC licensees were inadequate to accommodate the Site Licensees to be moved upward from new Channels 1-230 and downward from new Channels 510-710 without having some of the Site Licensees

¹⁴ Since Sprint Nextel holds relatively little 800 MHz spectrum in either the old Channels 1-150 or the old Interleaved, Expansion and Guard Channels (Channels 151-360 using the Commission's approach in the continental U.S.) in the Puerto Rico EA market, the waiver recently granted that company by the Commission is of little import. Since Preferred has not yet constructed its 800 MHz EA-Licensed Channels presumably it could move somewhat more rapidly than Sprint Nextel has proposed for EA markets in the continental U.S. Grant of Sprint Nextel's second waiver request presumably would not affect its obligation to vacate its Interleaved and Guard Band Channels in the Puerto Rico EA market.

¹⁵ 800 MHz Transition Administrator, Ex Parte Notification, WT Docket No. 02-55, filed on October 19, 2007, at 4.

¹⁶ TA Alternative Rebanding Proposal, at 4.

¹⁷ *Id.*

¹⁸ *Id.*

remain in the Channels generally reserved by the Commission's Rebanding Orders for the Guard Band.¹⁹

The TA resolved this spectrum "logjam" by expanding the Expansion Band from forty (40) Channels (new Channels 471-510 or 815.0125-815.9875 MHz/860.0125-860.9875 MHz) to sixty (60) Channels (Channels 471-530 or 815.0125-816.4875 MHz/860.0125-861.4875 MHz).²⁰ The TA then reduced the Guard Band from forty (40) Channels (Channels 511-550 or 816.0125-816.9875 MHz/861.0125-861.9875 MHz) to twenty Channels (Channels 531-550 or 816.5125-816.9875 MHz/861.5125-861.9875 MHz).

The TA therefore retained the generally applicable EMSR Block (new Channels 551-830 or 817.0125-823.9875 MHz/862.0125-868.9875 MHz). As the Commission recognized in its *800 Second MO&O*, the Puerto Rico market is unique and different for several reasons. First, Sprint Nextel did not win the majority of General Category EA Authorizations in FCC Auction #34. Preferred Acquisitions, Inc. ("PAI") won five of the six Frequency Blocks or 125 EA-Licensed Channels. In the FF Frequency Block won by Sprint Nextel in that Auction, Preferred held six (6) Site-Licensed Channels covering the Western Half of Puerto Rico and fifteen (15) such Channels covering the Eastern Half of the Island.

Second, Sprint Nextel did not win all, or even a majority of, the A (20 Channels—High Tech Communications Services, Inc.), B (60 Channels—Nextel) and C Frequency

¹⁹ *Id.*, at 5.

²⁰ *Id.* Interestingly, the TA proposed applying the interference protection standards generally applicable to the Expansion Band to the additional twenty (20) Channels it would add to such Band. If this proposal were to be adopted, an ESMR or ESMR-Eligible licensee with Channels in the lower portion of the Block (new channels 551-571) would have to meet a higher interference protection standard.

Block (120 Channels—North Sight Communications, Inc.) licenses awarded by the Commission in FCC Auction #16 (1997).

Third, Sprint Nextel holds only the Lower 80 Channels it won in FCC Auction #36 (2000) within the Interleaved, Expansion Band and Guard Band Channels. In Puerto Rico these eighty (80) EA-Licensed Channels are encumbered by ten (10) Site-Licensed Channels covering the Western Half of Puerto Rico and fifteen (15) such Channels covering the eastern Half of the Island.

Since the TA chose not to expand the ESMR portion of the PLMRB as the FCC had done in the Southeast to accommodate SouthernLINC and Nextel,²¹ it necessarily was faced with the problem of how to squeeze three hundred fifty (350) EA-Licensed Channels and thirty-seven (37) Site-Licensed Channels covering the Eastern Half of Puerto Rico into a total of two hundred eighty (280) Channels. It sought to resolve this spectrum “logjam” apparently by reducing Sprint Nextel’s Channels in the ESMR portion of the PLMRB on a *pro rata* basis.²² Still lacking sufficient spectrum within its ESMR Band, it then reduced each ESMR and ESMR-Eligible licensee’s spectrum on a *pro rata* apportionment basis.²³ The TA’s Alternative Rebanding Approach thus results in ESMR and ESMR-Eligible licensees’ collectively surrendering a total of fifty (50) EA-Licensed Channels and six (6) Site-Licensed Channels covering the Western Half of Puerto Rico and fifty (50) EA-Licensed Channels and thirty-one (31) Site-Licensed Channels

²¹ See 800 MHz Report & Order, at ¶¶ 161-169.

²² *Id.*, at ii & 10; see 800 MHz Second MO&O, at ¶ 33.

²³ *Id.* According to the TA, it has “determined that there will not be sufficient capacity to accommodate fully all ESMR and ESMR-eligible licensees in the ESMR band. If this plan is adopted, the TA would apportion the ESMR Band in accordance with the provisions et forth by the Commission in this proceeding’s *Second Memorandum Opinion and Order*.”

covering the Eastern Half of the Island. Such approach necessarily would result in Preferred's receiving fewer total, clean and contiguous EA-Licensed Channels than it presently holds and deny it at least one of its spectrum rights purchased at the conclusion of FCC Auction #34.²⁴

Recognizing that the same spectrum "logjam" necessarily exists for the ESMR portion of the PLMRB in the U.S. Virgin Islands as it does for Puerto Rico and that Non-ESMR and Non-ESMR Eligible incumbent licensees must be moved downward from the ESMR Block, the TA determined that the U.S. Virgin Islands market was best served by adopting the same rebanding plan as that selected for Puerto Rico.²⁵

Seeking to fit Puerto Rico and the U.S. Virgin Islands within the generally applicable 800 MHz reconfiguration framework, the TA proposed that Preferred and others negotiate a FRA with Sprint Nextel.²⁶ It therefore proposed a ninety (90)-day mandatory negotiations period for those licensees in the Puerto Rico EA market that are to be reconfigured and that were not previously placed into mandatory negotiations for these

²⁴ See Preferred, Ex Parte Presentation, WT Docket No. 02-55, filed on March 2, 2004, at 27-28; 33-35 and 41-44; 47 C.F.R. § 90.683.

²⁵ TA Alternative Rebanding Proposal, at 11. The FCC determined to limit any Alternative Rebanding Proposal to Puerto Rico only since "no party had identified any comparable channel shortage in the U.S. Virgin Islands." 800 MHz Second MO&O, at ¶ 32 & n. 72. See 800 MHz Second FNPR, at ¶ 3, n. 7. According to the FCC the Public Safety and Homeland Security Bureau lacks the delegated authority to act on this aspect of the TA's Alternative Rebanding Proposal because the Commission expressly excluded the U.S. Virgin Islands from its delegation in the 800 MHz Second MO&O. The FCC therefore must address this issue separately.

²⁶ Since Sprint Nextel lacks the 800 MHz spectrum in the Puerto Rico EA market both within the former General Category Channels and Interleave and Expansion Band Channels to exchange or surrender to facilitate rebanding, Preferred believes that it should administer the reconfiguration process. As noted elsewhere, it proposes to retain Concepts To Operations, Inc., a RF engineering and information systems consulting firm headquartered in Annapolis, Maryland to conduct the rebanding work in this EA market.

licenses.²⁷ The TA then recommended that the Commission adopt specific dates for a rebanding timetable as part of its order adopting an alternative band plan.

²⁷ These licensees specifically would include all Non-ESMR and non-ESMR Eligibles holding Site-Licensed Channels within the proposed Guard Band and ESMR portion of the PLMRB and all EA licensees electing to move to the ESMR Band.. See TA Alternative Rebanding Proposal, at 12.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Improving Public Safety Communications in the)	WT Docket No. 02-55
800 MHz Band)	
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New 800 MHz Band Plan for Puerto Rico)	

To: The Commission

COMMENTS

Pursuant to Section 1.415 of the Rules of the Federal Communications Commission ("FCC" or "Commission"), Preferred Communication Systems, Inc. ("Preferred")²⁸

²⁸ Together with Preferred Acquisitions, Inc. ("PAI"), its wholly-owned subsidiary corporation, Preferred holds five of the six General Category ("GX") Frequency Block licenses in the Puerto Rico EA market as well as seventy-seven (77) GX Site-Licensed Channels in Puerto Rico and the U.S. Virgin Islands. Preferred has participated actively in the 800 MHz Rebanding proceeding for the past five years. In 2003 it participated along with the United Telecom Council in forming what became known as the UTC/CTIA Users Group that advocated the Commission's adoption of stringent technical standards and mitigation tactics to mitigate, if not eliminate interference caused by Nextel Communications, Inc. and A Frequency Block cellular operators to Public safety licensees in the 800 MHz Band. In March 2004, it filed an 800 MHz Rebanding Cost Analysis prepared by Concepts To Operations, Inc. ("CTO") that demonstrated that the probable 800 MHz rebanding costs would far exceed Nextel's then estimate of \$850 million. *See* Preferred, Ex Parte Presentation, Exhibit K, WT Docket No. 02-55, filed on March 2, 2004. In November 2005 it filed a Licensing Analysis again prepared by CTO that in many of the 570 cites in the U.S with a population exceeding 50,000 that Sprint Nextel Corp. lacked sufficient spectrum to provide all relocated licensees with "comparable facilities." *See* Preferred, Petition for Stay, Exhibit 1, WT Docket No. 02-55, filed on November 9, 2005.

respectfully submits its Comments in response to the *Second Further Notice of Proposed Rulemaking* released June 30, 2008 in the above-captioned matter.²⁹

In accordance with the Commission's guidelines set forth in its *800 MHz Second FNPR*, Preferred has both analyzed (1) the Transition Administrator's ("TA") "Proposal for Adoption of an Alternative 800 MHz Band Plan and Negotiation Timetable for Puerto Rico and the U.S. Virgin Islands Economic Area ("TA Alternative Rebanding Proposal")³⁰ and (2) proposed an Alternative Rebanding Plan for Puerto Rico.

I. INTRODUCTION

In the *800 MHz Second MO&O*, the FCC recognized that for several reasons the Puerto Rico market presented a "unique situation that is distinct from other markets."³¹ First, Sprint Nextel holds considerably less spectrum in Puerto Rico than it does elsewhere. Second, several other licensees have acquired significant EA license holdings in Puerto Rico at auction and seek to operate as ESMRs. Third, Puerto Rico has numerous Site-Licensed incumbents that will need to be relocated downward from the ESMR Block.³² Thus, according to the Commission, an alternative band plan was appropriate for this market.

²⁹ Improving Public Safety Communications in the 800 MHz Band—New 800 MHz Band Plan for Puerto Rico, WT Docket No. 02-55, *Second Further Notice of Proposed Rulemaking*, DA 08-1530 (released June 30, 2008).

³⁰ Transition Administrator, Ex Parte Notification, WT Docket No. 02-55, filed on October 19, 2007 ("TA Alternative Rebanding Proposal").

³¹ Improving Public safety Communications in the 800 MHz Band, WT Docket No. 02-55, Second Memorandum Opinion and Order, 22 FCC Rcd 10467 ¶ 32 (2007) ("800 MHz Second MO&O").

³² *Id.*

Rather than specifying a band plan for Puerto Rico, the FCC directed the TA to propose an alternative band plan and negotiation timetable for this market within sixty (60) days from the effective date of the *800 MHz Second MO&O*. In the interim, the Commission suspended the rebanding timetable for Puerto Rico. According to the FCC the revised band plan must comply with the following criteria:

1. the alternative rebanding plan must fully accommodate all Non-ESMR licensees including those that need to be relocated downward from the ESMR Block into the Interleaved and Expansion band Channels;
2. the alternative rebanding plan must include a Guard Band between the ESMR and Non-ESMR Bands;
3. replacement spectrum in the ESMR Band is to be assigned to ESMR and ESMR-Eligible licensees in accordance with the Commission's rules governing EA- and Site-Licensed Channels;
4. due to the relatively small amount of 800 MHz band spectrum held by Sprint Nextel in Puerto Rico, it is to be assigned replacement spectrum on the same basis as other ESMR licensees, i.e., it will receive no more spectrum in the ESMR Band than it holds currently;
5. if there is insufficient spectrum in the ESMR Band to accommodate all ESMR and ESMR-Eligible licensees, Sprint must surrender spectrum on a *pro rata* basis to the other licensees to meet the shortfall;
6. if insufficient spectrum still remains after Sprint Nextel has surrendered *pro rata* apportionment may be used to determine each licensee's share of the ESMR

Band; all ESMR and ESMR-Eligible licensees must participate in such apportionment.³³

The FCC also noted that nothing in its Order precluded the ESMR and ESMR-Eligible licensees from entering into a voluntary agreement with respect to the disposition of ESMR Band spectrum in Puerto Rico.³⁴ The Commission noted that it would consider such an agreement provided that it is consistent with its orders and rules in this proceeding and does not encroach on the non-ESMR Band as defined in the TA's alternative rebanding proposal.

On October 19, 2007, the TA filed its Alternative Rebanding Proposal. Instead of following the Commission's finding that the Puerto Rico market is a "unique situation that is distinct from other markets",³⁵ the TA attempted to "conform the alternative band plan to the standard United States 800 MHz reconfiguration band plan ... to the extent feasible in order to minimize disruption to licensees, particularly those that have already begun reconfiguration."³⁶

Although sufficient spectrum exists in the Interleaved and Expansion Band Channels in the Puerto Rico market to accommodate both Non-ESMR and Non-ESMR Eligible

³³ *Id.* See Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969, 14978-79, 14991-92, ¶ 168 & n.444 (2004), as amended by *Erratum*, 19 FCC Rcd 19651 (2004), and *Erratum*, 19 FCC Rcd 21818 (2004) ("800 MHz Report & Order").

³⁴ 800 MHz Second MO&O, at ¶ 36. Such licensees would include High Tech Communications Services, Inc. (A Frequency Block in the Upper 200 Channels—20 Channels); Sprint Nextel (B Frequency Block in the Upper 200 Channels—60 Channels and FF Frequency Block in the General Category Channels—25 Channels); North Sight Communications, Inc. (C Frequency Block in the Upper 200 Channels—120 Channels); and Preferred (D, DD, E, EE, and F Frequency Blocks in the General Category Channels—125 Channels).

³⁵ *Id.*, at ¶ 32.

³⁶ TA Alternative Rebanding Proposal, at i.

licensees both moving upward from Channels 1-120 and downward from the Upper 200 Channels,³⁷ the TA determined to maintain the normally applicable Non-ESMR and ESMR Blocks.³⁸ Within the Non-ESMR Block, the TA also maintained both an Expansion Band and Guard Band.³⁹ It determined to increase the Expansion Band by .5 MHz or twenty (20) paired channels and decrease the Guard Band by an identical amount. According to the TA this approach allowed all Non-ESMR and Non-ESMR Eligibles to be cleared both from the ESMR Block and Guard Band Channels, resolved combiner spacing issues, and provided some additional spectrum for future system expansion.⁴⁰

³⁷ According to the TA such spectrum “would not adequately serve” the Non-ESMR and non-ESMR Eligible licensees in Puerto Rico since such licensees could not be cleared from the ESMR Block without (1) otherwise modifying the generally applicable 800 MHz rebanding plan and (2) using the Guard Band Channels.

For purposes of this discussion, the TA and Preferred are using the terms “Interleaved Channels” to designate new Channels 231-470 (809.0125-814.9875 MHz/854.0125-859.9875 MHz), “Expansion Band Channels” to designate new Channels 471-510 (815.0125-815.9875 MHz/860.0125-860.9875) and “Guard Band Channels” to designate new Channels 511-550 (816.0125-816.9875 MHz/861.0125-861.9875 MHz).

Preferred also is assuming that the TA’s Alternative Rebanding Proposal does not move Sprint Nextel’s B Frequency Block EA Channels downward from the ESMR Block for failure to have constructed either a “High Density Cellular System” or “Cellular System” by November 22, 2004. *See* n. 4 *supra* and 800 MHz MO&O, at ¶¶ 31 and 47 C.F.R. § 90.7.

³⁸ TA Alternative Rebanding Proposal, at 3, 6. According to the TA Alternative Rebanding Proposal, High Tech Communications Services, Inc. (“High Tech”), the holder of the A Frequency Block EA (20 Channels) would be moved downward from the ESMR Block to the Interleaved and Expansion band Channels. Since High Tech would now be entitled to twenty (20) clean and contiguous channels, Preferred believes that it should be allowed to elect to remain in the ESMR Block subject to the FCC’s conditions for making that election. *See* 800 MHz MO&O, at ¶¶ 26-27. Preferred would recommend that the Commission could provide High Tech a thirty (30)-day period following release of its Order during which it could make such election.

³⁹ TA Alternative Rebanding Proposal, at 4-5.

⁴⁰ *Id.*, at 5.

Having determined not to expand the ESMR Block, the TA's Alternative Rebanding Proposal was forced to "squeeze" three hundred fifty (350) EA-Licensed Channels and thirty-seven (37) Site-Licensed Channels held by ESMR and ESMR-Eligible licensees presently covering the Eastern Half of Puerto Rico into two hundred eighty (280) ESMR Block Channels. According to the TA it would apportion the ESMR Band in accordance with the FCC's provisions set forth in its *800 MHz M&O*.⁴¹

On June 30, 2008, the Commission released its *800 MHz Second FNPR* in which it requested comments from interested parties both with respect to the TA's Alternative Rebanding Proposal for Puerto Rico and the U.S. Virgin Islands and on potential alternatives.⁴² Having determined that the TA's Alternative Rebanding Proposal is fatally flawed in several respects, Preferred retained Concepts To Operations, Inc., a RF engineering and information systems consulting firm headquartered in Annapolis, Maryland to undertake a comprehensive licensing analysis both of Puerto Rico and the U.S. Virgin Islands. Based upon CTO's findings set forth as Exhibit A hereto, Preferred developed an Alternative Rebanding Plan both for Puerto Rico and the U.S. Virgin Islands that is set forth in detail by these Comments.

⁴¹ *Id.*, at ii.

⁴² *800 MHz Second FNPR*, at 2.

II. DISCUSSION.

A. 800 MHz SMR Licensing History in Puerto Rico and the U.S. Virgin Islands

Puerto Rico and the U.S. Virgin Islands have a unique SMR licensing history. Unlike markets in the continental U.S., Motorola held relatively few SMR channels in the early 1990s.⁴³ In January 1993, ten corporate clients of Express Communications, Inc. (“Express”) filed three 800 MHz SMR YX license applications for sites in San Juan, Pastilla and Mayaguez. Later five additional affiliated corporations filed an additional 1-3 applications on these sites.⁴⁴

In 1994, these fifteen corporate licensees formed a joint venture called Telecellular which on behalf of its participating licensees filed a request for an Extended Implementation Authority (“EIA”). On February 27, 1995, the FCC granted an EIA to the participating licensees in Telecellular. Pursuant to its EIA such participating licensees were granted five years to construct a digital cellular architecture system covering Puerto Rico. In late 1995 the Commission required all of the holders of EIAs to

⁴³ Motorola de Puerto Rico, Inc. operated a small analog dispatch system comprising a total of forty-eight (48) paired SMR Channels and leased space on numerous towers it had constructed throughout Puerto Rico. In the mid-1990s Motorola sold all of its SMR assets on the Island to Crown Castle International Corp. de Puerto Rico.

⁴⁴ As a result primarily of Express’ clients being granted 800 MHz YX licenses both in the Upper 200 Channels and Lower 80 Channels, through early 2000 Nextel held relatively few 800 MHz SMR YX licenses in either Puerto Rico and the U.S. Virgin Islands. Moreover, Nextel held no BILT licenses in these markets.

For an exhaustive discussion of the SMR licensing history of Puerto Rico, *see* North Sight Communications, Inc., PR Docket No. 93-144, Petition for Reconsideration, filed on December 12, 1997; North Sight Communications, Inc., Reply to Opposition to Petition for Reconsideration, filed on February 27, 1998. The licenses granted for the Pastilla site later were modified and moved to Ponce.

file a rejustification of their respective extended construction periods.⁴⁵ Upon approval of a licensee's EIA rejustification showing, the licensee would receive a construction period of two years or the remainder of the current EIA period, whichever was shorter.⁴⁶

On May 20, 1997, the Commission denied Telecellular's rejustification and concluded that it would have six months from the release of its Order (until November 20, 1997) to complete construction.⁴⁷ Telecellular filed a Petition for Reconsideration arguing that its failure to commence construction was the result of complex litigation which interfered with its financing and equipment contracts. In its Petition Telecellular argued that it successfully had defended the lawsuit and had secured alternate financing and equipment vendors. Under these circumstances, the FCC found these efforts sufficiently diligent to conclude that Telecellular should have two additional years to complete construction of its system and therefore granted its Petition for Reconsideration and granted it rejustification of its EIA.⁴⁸

As a result of the D.C. Circuit Court of Appeals decision in *Fresno Mobile Radio, Inc. v. Federal Communications Commission*,⁴⁹ in April 1999 the FCC determined temporarily to toll the construction period of 800 MHz EIA holders until it addressed the construction standards for EA licensees and EIA holders in accordance with the Court's

⁴⁵ Amendment of Part 90 of the Rules to facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463, 1525 (1995)("800 MHz SMR First R&O").

⁴⁶ *Id.*

⁴⁷ Amendment of Part 90 of the Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Memorandum Opinion and Order*, DA 97-1059 (1997)("Extended Implementation Order").

⁴⁸ Amendment of Part 90 of the Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Memorandum Opinion and Order*, DA 97-2373 (1997)("EI Rejustification Order"), at ¶ 26.

⁴⁹ 165 F.3d 965 (D.C. Cir. 1999).

remand and established a new schedule for construction of the latter's SMR licenses.⁵⁰ On December 23, 1999, the Commission acted upon the Court's remand by allowing incumbent licensees who were within their construction periods as of the *Fresno Mobile Radio* decision – such as Telecellular – the choice between complying with the terms of its EIA or applying alternative construction requirements similar to those imposed on EA licensees in the 800 MHz Band.⁵¹ For a licensee electing the latter construction requirements such as Telecellular, the Commission began its five (5)-year construction period on the date of its EIA grant. The FCC also tolled the construction period between the date of the *Fresno Mobile Radio* decision and the release of the remand order. Such decision effectively extended an incumbent's construction period by approximately ten months.

Much like markets in the continental U.S., Metropolitan Communications Corp., COMCOA, Ltd., Express and other application preparation services firms seeking to market 800 MHz SMR GX licenses to the public discovered Puerto Rico by early 1992. By 1994-1995, more than three hundred individuals held 800 MHz SMR GX licenses in these markets. Moreover, unlike the U.S. markets, Preferred, rather than the Upper 200 Channels EA Authorization holders, purchased the vast majority of 800 MHz SMR GX licenses. As a result, High Tech (Upper 200 Channels A Frequency Block—20 Channels), Nextel (Upper 200 Channels B Frequency Block—60 Channels) and North Sight (Upper 200 Channels C Frequency Block—120 Channels) were unable to clear off Non-EA licensees holding Site-Licensed Channels within the Upper 200 Channels such

⁵⁰ Public Notice, PR Docket No. 93-144, 14 FCC Rcd 6348 (1999).

⁵¹ Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Memorandum Opinion and Order on Remand*, FCC 99-399 (released December 23, 1999).

as Crown Castle International Corp. de Puerto Rico and Communications leasing Corp./Communications Industrial & Electronics Corp.

Puerto Rico and the U.S. Virgin Islands continued their uniqueness with respect to 800 MHz SMR licensing upon the FCC's conduct of SMR spectrum auctions beginning in 1997. In FCC Auction #16 (Upper 200 Channels) High Tech won the A Frequency Block (20 Channels), Nextel won the B Frequency Block (60 Channels) and North Sight won the C Frequency Block (120 Channels).⁵²

In FCC Auction #34 Preferred won five of the six Frequency Block licenses (D, DD, E, EE and F) for net winning bids totaling \$17.4 million. Nextel won the FF Block (\$4.231 million) in which Preferred held six Site-Licensed Channels covering the Western Half of Puerto Rico and fifteen Site-Licensed Channels covering the Eastern Half of the Island.⁵³

In FCC Auction #36, Nextel won all sixteen (16) 5-channel Frequency Blocks in the Puerto Rico EA market for the relatively low sum of \$392,000.

B. 800 MHz Rebanding in the Continental U.S.

In the continental U.S. the Commission's generally applicable 800 MHz Rebanding Plan is premised upon Sprint Nextel holding the majority, if not all, of the EA Authorizations and sufficient spectrum within the Interleaved, Expansion Band and

⁵² Puerto Rico is the only EA market in which Nextel did not win the C Frequency Block licenses in this Auction.

⁵³ The bidding competition between Nextel and Preferred was so strong for these EA Authorizations that the Puerto Rico EA market commanded higher gross winning bids in this FCC Auction than any other EA market regardless of population. The Puerto Rico EA market had six of the seven highest gross winning bids in the Auction.

Guard Band Channels to accommodate the Non-ESMR and Non-ESMR Eligible licensees to be relocated there and provide them with comparable facilities.⁵⁴

1. EA Markets in Which Sprint Nextel Holds All or Majority of General Category and Upper 200 Channels EA Authorizations

The Commission's generally applicable Rebanding Plan works as follows:

First, the FCC defines "comparable facilities" differently according to either the identity of the licensee—Sprint Nextel and SouthernLINC fall into this tier—or whether they constructed a certain type of SMR system—a "800 MHz Cellular System" by the November 22, 2004, the date the *800 MHz R&O* was published in the Federal Register. The EA- and Site-Licensed Spectrum of Sprint Nextel and SouthernLINC move into the ESMR Block on a 1:1 EA market-wide clean and contiguous basis. These licensees entered into an agreement in June 2004 that essentially was approved by the Commission in the *800 MHz Report & Order* and *800 MHz Supplemental Order*.⁵⁵

Second, for all other EA licensees the Commission adopted the so-called "Cellular Deployment Test" long advocated by Nextel.⁵⁶ For an EA licensee other than Sprint Nextel and SouthernLINC that constructed an ESMR system on or before November 22, 2004 "comparable facilities" consist of an identical number of Channels in the ESMR Block upon an EA market-wide clean and contiguous basis.⁵⁷ For such an EA licensee, "comparable facilities" for its Site-Licensed Channels was subject to a multi-tiered analysis. To move into the ESMR Block such Site-Licensed Channels

⁵⁴ *But see* Preferred Petition for Stay, at vi & n. 12 *supra*.

⁵⁵ *See* 800 MHz Report & Order, at ¶¶ 164-169 and 306 and 800 MHz Supplemental Order, at ¶ 82.

⁵⁶ *See* 800 MHz Supplemental Order, at ¶¶ 77-81; Consensus Parties, WT Docket No. 02-55, Reply Comments, filed on February 25, 2003, at 28 & n. 60.

⁵⁷ 800 MHz Supplemental Order, at ¶ 77.

1. must have been licensed to it as of November 22, 2004;
2. the site-based cell must have been an integral part of the EA licensee's ESMR system as of November 22, 2004;⁵⁸ and
3. such a site-based cell may be moved to the ESMR Block, but it is limited to the 40 dBu/Vm contour it provided as of November 22, 2004.⁵⁹

For an EA licensee that had not constructed an ESMR system as of November 22, 2004, "comparable facilities" consist of an identical number of Channels in the ESMR Block but only upon the existing geographic "footprint" basis as of November 22, 2004.⁶⁰ Moreover, if additional unencumbered "white space" exists after such EA

⁵⁸ The Commission defined "integral part" as a cell that has a 40 dBu/Vm coverage contour overlapping the 40 dBu/Vm coverage contour of another cell integral to the ESMR system, and must be capable of "hand off" of calls to and from the cell its 40 dBu/Vm coverage contour overlaps. 800 MHz Supplemental Order, at ¶ 78. The FCC subsequently amended its definition of "integral" to allow EA licensees operating an 800 MHz Cellular System as of November 22, 2004 to "present facts to the TA that may support a finding that non-overlapping stations are an integral part of the licensee's EA-based system." 800 MHz MO&O, at ¶ 15. Moreover, the Commission granted Airpeak Communications, LLC's ("Airpeak") waiver request to the extent of directing the TA to consider site-based facilities acquired through spectrum lease as potentially eligible for relocation to the ESMR Block. However, Airpeak had the burden of demonstrating to the TA that the leased station it wished to relocate was an integral part of its EA-based system as of November 22, 2004. *Id.*, at ¶ 16. In addition, the FCC granted Airpeak's waiver with respect to relocating Site-Licensed Channels that it purchased post-November 22, 2004 since (1) Airpeak was operating an ESMR system in the EA markets in which it acquired the Site-Licensed Channels; (2) Airpeak had shown that the majority of acquired site licenses were needed to meet growing subscriber demand; (3) some of the acquired Site-Licensed Channels were lying on channels within Airpeak's EA Frequency Block license; and (4) Airpeak exercised reasonable diligence in seeking to integrate the site licenses into its system, and some of the delays were not within its control. *Id.*, at ¶ 19.

⁵⁹ 800 MHz Supplemental Order, at ¶ 78. The FCC determined to grant Airpeak and Airtel Wireless, LLC a waiver and allow them to obtain an EA-market wide license for any Site-Licensed Channels provided that they could demonstrate that the 40 dBu/Vm contours of the Site-Licensed Channels cover at least fifty percent (50%) of the EA market's population. 800 MHz MO&O at ¶ 18.

⁶⁰ 800 MHz Supplemental Order, at ¶ 79.

licensee is relocated, that additional unencumbered “white space” is available for use by Sprint Nextel.⁶¹ Moreover, the FCC determined that such licensees were entitled to reimbursement only for reasonable transactional costs, such as legal and engineering fees related to determination of comparable spectrum.⁶²

In the 800 MHz MO&O, the Commission determined to modify the 800 MHz Supplemental Order by allowing Non-ESMR EA licensees to relocate their Site-Licensed Channels that were part of such licensee’s “integrated communications system.”⁶³

As discussed in Preferred’s previous filings in this proceeding, the FCC’s generally applicable Rebanding Plan is premised upon the majority of EA markets in which Sprint Nextel held all or a majority of both the General Category EA Authorizations and Upper 200 Channels EA Authorizations.⁶⁴ In these markets Sprint Nextel essentially is surrendering 800 MHz noncontiguous EA- and Site-Licensed Channels within the Interleaved, Expansion and Guard Band Channels in exchange for

⁶¹ *Id.* In effect, the Commission is confiscating one of the ESMR-Eligible licensee’s spectrum rights purchased in a FCC Auction and transferring it to Sprint Nextel without compensation. *See* Preferred, WT Docket No. 02-55, Ex Parte Presentation, filed on March 2, 2004, at 12-13, 17-18, and 32; *see also* 47 C.F.R. § 90.683(b).

⁶² 800 MHz Supplemental Order, at ¶ 79.

⁶³ 800 MHz MO&O, at ¶ 25. To qualify as part of an integrated communications system, a site-based station must be:

- located within the geographic boundaries of the relevant EA; or
- outside the geographical boundaries of the EA but with a 40 dBu/Vm contour that intersects the EA boundary; or
- outside the geographical boundaries of the EA but with a 40 dBu/Vm contour that, in combination with other of the licensee’s stations with mutually intersecting 40 dBu/Vm contours, forms a contiguous footprint with the EA boundaries.

Id.

⁶⁴ *See, e.g.,* Preferred, WT Docket No. 02-55, Ex Parte Presentation, filed on March 2, 2004, at 25-31.

(1) relocation of Non-ESMR and Non ESMR-Eligible licensees' Site-Licensed Channels from its EA Authorizations comprising new Channels 551-830 and (2) six (6) MHz of EA-Licensed clean and contiguous Channels in the former NPSPAC Channels.⁶⁵ In exchange for its commitment to pay all reasonable costs directly related to reconfiguration of the 800 MHz PLMRB, the FCC awarded Nextel exclusively 10 MHz of 1.9 GHz Band spectrum on a nationwide basis.⁶⁶ In these EA markets, the FCC's Rebanding Plan is arguably legal, practical and mathematical.⁶⁷

2. EA Markets in Which Sprint Nextel Holds Less Than a Majority of the General Category EA Authorizations and/or Upper 200 Channels EA Authorizations

In EA markets in which Nextel did not hold a majority of both the General Category EA Authorizations and Upper 200 Channels EA Authorizations, the Commission's generally applicable Rebanding Plan fails on legal, practical and mathematical grounds for several reasons.⁶⁸

First, it seeks to squeeze as much as 11.5 MHz of EA-Licensed spectrum and 0-9 MHz of Site-Licensed spectrum into 6 MHz of spectrum in the ESMR Block and some "other spectrum." By exclusively reserving this spectrum and the 1.9 GHz Band to the Nextel Control Group, the Commission's approach necessarily confiscates one of the Non-Nextel ESMR or ESMR-Eligible licensees' spectrum rights.⁶⁹

Second, when confronted with this ESMR Block spectrum shortfall, the FCC has sought either to (1) expand the ESMR Block (Southeast Region) and apportion its

⁶⁵ See 800 MHz Report & Order, at ¶¶ 6, 11, 23, and 146-158.

⁶⁶ *Id.*, at ¶¶ 12, 33-35, 223-225; 800 MHz MO&O, at ¶ 69.

⁶⁷ Preferred, WT Docket No. 02-55, Ex Parte Presentation, filed on March 2, 2004, at 26-27, 30-31.

⁶⁸ *Id.*, at 41-44.

⁶⁹ *Id.*, at 43.

spectrum through a voluntary agreement between the affected ESMR licensees⁷⁰ or (2) use the “protuscrean” remedy of reducing each ESMR’s and ESMR-Eligible’s spectrum holdings within such Block.⁷¹

Third, in establishing its “multi-tier” definition of comparable facilities for EA Authorization holders, the Commission impermissibly discriminates among identically situated licensees based upon the imposition of an extra-license condition—the

⁷⁰ See 800 MHz Report & Order, at ¶¶ 164-168; and 800 MHz MO&O, at ¶¶ 46-49.

⁷¹ See 800 MHz Second MO&O, at ¶¶ 28-29. In Sprint Nextel’s Petition for Reconsideration it sought clarification from the FCC that in any EA market in which there is insufficient spectrum to accommodate all of the ESMR and ESMR-Eligible licensees the 800 MHz Report & Order adopted two remedies: (1) expanding the ESMR Block and, if a channel shortfall still remained, (2) distributing the available channels on a pro rata basis among licensees.” See Sprint Nextel, WT Docket No. 02-55, Petition for Reconsideration, filed on January 27, 2006, at 12-14. Sprint also contended that these remedies may be invoked in any EA market so long as the affected licensees agree, *Id.* at 12-13. Finally, Sprint argues that it should not be required to accept the full burden of a shortage of ESMR spectrum in any market. To do so, it contended, would contravene the “value for value” concept that underlies the Commission’s Rebanding Orders. *Id.*, at 13.

In rejecting Sprint Nextel’s interpretation of the 800 MHz Report & Order, the FCC indicated that it had not found any EA markets outside of the Southeast Region and Puerto Rico where a ESMR spectrum shortfall existed. *But see generally* Preferred, WT Docket No. 02-55, Ex Parte Presentation, filed on March 2, 2004, at 24-28 (“In other EA markets in which approximately 75 million persons reside, Nextel is allocated 1.9 GHz Band spectrum even though one or more Non-Nextel Control Group EA licensees hold all, or at a considerable majority of, the 800 MHz General Category EA-Licensed Spectrum.”), 31-33 (Washington, D.C.-Baltimore MD EA Market discussed as an example), 33-34 (Staunton, VA EA market discussed as an example) and 34-35 (Puerto Rico EA market discussed as an example). The Commission then reaffirmed that the ESMR Block in all other EA markets other than the Southeast Region, except for Puerto Rico, is limited to the 817-824 MHz/862-869 MHz Band as specified in Section 90.614 (b) of the Commission’s rules. The FCC then clarified that under limited circumstances it may apportion the ESMR Block among ESMR and ESMR-Eligible licensees on a *pro rata* basis. According to the FCC it would consider such apportionment only in unusual cases where “parties can demonstrate that [having Sprint Nextel initially surrender ESMR Block spectrum on a pro rata basis] is insufficient to address shortfall issues.” 800 MHz Second MO&O, at ¶ 30.

construction of ESMR or now High Density Cellular Systems—by the EA licensee within its otherwise applicable construction deadline.⁷²

Finally, in seeking to separate the award of 1.9 GHz Band spectrum from the 800 MHz rebanding process, the FCC impermissibly sold such spectrum on a nationwide basis to a single licensee.⁷³

C. Preferred's Alternative Rebanding Plan for Puerto Rico and the U.S. Virgin Islands

Upon release of the *800 MHz Second FNPR*, Preferred retained Concepts To Operations, Inc. ("CTO") to undertake an analysis of the 800 MHz PLMRB in Puerto Rico and the U.S. Virgin Islands. Preferred requested that CTO prepare the "Alternative Reconfiguration Plan for Puerto Rico and the U.S. Virgin Islands " attached hereto as Exhibit A.⁷⁴

1. Methodology.

In preparing its Alternative Rebanding Plan for Puerto Rico and the U.S. Virgin Islands, CTO sought to promote the following goals:

- fully protect the spectrum rights of all EA licensees;

⁷² See Preferred, WT Docket No. 02-55, Ex Parte Presentation, filed on March 2, 2004, at 41-43. See also, *Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965 (D.C. Cir. 1999).

⁷³ See Preferred, WT Docket No. 02-55, Ex Parte Presentation, filed on March 2, 2004, at 42-43; see generally Preferred, WT Docket No. 02-55, Petition for Reconsideration, filed December 22, 2004, at 33-44. The Commission responded to Preferred's and other Non-Nextel EA licensees' arguments in the 800 MHz MO&O, at ¶¶ 59-72.

⁷⁴ In preparing such Report, Preferred requested that CTO analyze the Puerto Rico EA market on a pre-FRA basis and that Preferred would purchase all of the 800 MHz GX Site-Licensed Channels within the D, DD, E, EE and F Frequency Blocks. Under Preferred's Alternative Rebanding Plan, these Site-Licensed Channels would be relocated to the Interleaved Channels on a geographic "footprint" basis only. See "800 MHz License Chart for Puerto Rico Market" attached hereto as Exhibit B.

- provide Non-ESMR and Non-ESMR-Eligible licensees relocating upward from new Channels 1-230 and downward from new Channels 511-710 an identical number of total Channels and comparable facilities;
- provide a one MHz wide Guard Band between the Non-ESMR and ESMR Blocks sufficient to protect Public Safety and other High Site and High Power licensees from interference;
- if insufficient spectrum exists to accomplish the above goals, Sprint Nextel would surrender only some of its Site-Licensed rather than EA-Licensed Channels;⁷⁵
- move Public Safety licensees from Interleaved and Expansion Band Channels to new Channels 1-230 along with such licensees presently operating within the NPSPAC Channels
- minimize relocation of B/ILT and other High Site and High Power licensees within new Channels 231-480

2. Proposed Movements.

a. Old NPSPAC Channels.

In the Puerto Rico EA market Preferred holds one hundred twenty-five (125) General Category EA-Licensed Channels (D, DD, E, EE and F Frequency Blocks) and six (6) Site-Licensed Channels in the FF Frequency Block held by Sprint Nextel covering the Western Half of Puerto Rico and fifteen (15) such Channels covering the Eastern Half of the Island. Sprint Nextel holds twenty-five (25) EA-Licensed Channels in the highly encumbered FF Frequency Block.

Under Preferred's Alternative Rebanding Plan, it moves EA- and Site-Licensed Channels according to the class or type of license rather than how a company operated on its spectrum as of November 22, 2005 ("Cellular Deployment Test") or the

⁷⁵ Although Sprint Nextel's total Channels in the Puerto Rico EA market would be decreased, CTO's Alternative Rebanding Plan would maintain its EA-Licensed channels and considerably increase that company's EA market-wide, clean and contiguous channels. *See* 800 MHz Second MO&O, at ¶ 30.

identity of the licensee. Unlike the Commission's generally applicable Rebanding Plan, Preferred's Alternative Rebanding Plan therefore is legally, practically and mathematically sound.⁷⁶

Seeking to minimize disruption to the present licensing scheme, Preferred's Alternative Rebanding Plan moves one hundred twenty (120) of Preferred's GX EA-Licensed Channels (D, DD, E, EE Frequency Blocks and the lower 20 Channels from its F Frequency Block) to new Channels 711-830 (821.0125-823.9875 MHz/ 866.0125-868.9875 MHz). It moves Preferred's remaining five (5) EA-Licensed Channels (F Frequency Block) and its six (6) Site-Licensed Channels covering the Western Half of Puerto Rico and fifteen (15) such Channels covering the Eastern Half of the Island within the FF Frequency Block held by Sprint Nextel and Sprint Nextel's EA-Licensed Channels to new Channels 481-510 (815.2625-815.9875 MHz/ 860.2625-860.9875 MHz). Preferred's five (5) EA-Licensed Channels in the F Frequency Block would move to new Channels 506-510 (815.8875-815.9875 MHz/ 860.8875-860.9875 MHz). The present FF Frequency Block would move intact to new Channels 481-505 (815.2625-815.8625 MHz/860.2625-860.8625 MHz).

b. Old Upper 200 Channels.

Preferred's Alternative Rebanding Plan leaves the old Upper 200 Channels EA licensees in the Puerto Rico EA market intact but upon an unencumbered or clean and contiguous basis. North Sight, the holder of the C Frequency Block license (120 Channels), therefore would remain on new Channels 591-710 (818.0125-820.9875 MHz/ 863.0125-865.9875 MHz). Likewise, Sprint Nextel, the holder of the B Frequency

⁷⁶ For example, under Preferred's Alternative Rebanding Plan therefore only one definition of "comparable facilities" for EA licensees is necessary.

Block (60 Channels), would remain on new Channels 531-590 (816.5125-817.9875 MHz/861.5125-862.9875 MHz) as would High Tech Communications Services, Inc., the holder of the A Frequency Block (20 Channels) on new Channels 511-530 (816.0125-816.4875 MHz/ 861.0125-861.4875 MHz). Each of these EA licensees' number of clean and contiguous EA-Licensed Channels would be increased considerably.

The 800 MHz YX Site-Licensed Channels presently within the Upper 200 Channels would be moved downward to the Guard Band (new Channels 441-480 or 814.2625-815.2375 MHz/ 859.2625-860.2375) and then the Interleaved Channels (new Channels 231-440 or 809.0125-814.2375 MHz/ 854.0125-859.2375 MHz) on a geographic "footprint" basis only. Wherever possible, Preferred's Alternative Rebanding Plan seeks to move a particular licensee's Site-Licensed Channels into a block of contiguous Channels. Lacking sufficient spectrum to accommodate all of these Site-Licensed Channels, the Preferred Alternative Rebanding Plan would require only Sprint Nextel to surrender certain Site-Licensed Channels.⁷⁷

To accommodate the multiple ESMR and ESMR-Eligible licensees seeking to remain in or move into the ESMR Block in the Puerto Rico EA market, Preferred's Alternative Rebanding Plan increases such Block by seventy (70) Channels or 3.5 MHz (from new Channel 551 or 817.0125 MHz/ 862.0125 MHz downward to new Channel 481 or 815.2625 MHz/860.2625).

⁷⁷ Given the Commission's determination in both the 800 MHz MO&O and 800 MHz Second MO&O with respect to the apportionment of ESMR Block spectrum and its directive in the 800 MHz Second MO&O and 800 MHz Second FNPR to fully accommodate all Non-ESMR licensees, Preferred believed that requiring Sprint Nextel to surrender only Site-Licensed Channels was appropriate. *See* 800 Second MO&O, at ¶ 2; and 800 MHz MO&O, at ¶¶ 30, 33.

c. Guard Band.

To comply with the FCC's directive in the *800 MHz Second MO&O* and minimize interference with Public Safety and other High Site and High Power licensees in the Interleaved Channels, Preferred's Alternative Rebanding Plan establishes a one MHz-wide Guard Band beginning at new Channel 441 (814.2625 MHz/ 859.2625 MHz) and ending at new Channel 480 (815.2375 MHz/ 860.2375 MHz).

d. Expansion Band.

Since Preferred's Alternative Rebanding Plan moves Public Safety licensees downward from the Interleaved Channels to new Channels 1-230, it eliminates the Expansion Band and decreases the number of Interleaved Channels in the Commission's generally applicable Rebanding Plan from 240 to 210. Under Preferred's Alternative Rebanding Plan, the Interleaved Channels would begin at new Channel 231 (809.0125 MHz/854.0125 MHz) and end at new Channel 440 (814.2375 MHz/ 859.2375 MHz).

e. Interleaved Channels.

Public Safety licensees in new Channels 231-510 would be moved downward to new Channels 1-230 on a geographic "footprint" basis only. Such relocation frees up the seventy (70) Channels necessary to accommodate the expanded ESMR Block and a one MHz-wide Guard Band in the Puerto Rico EA market. Such relocation also minimizes the potential for interference to Public Safety systems by spectrally separating them from conflicting architecture systems by 250 Channels or 12.5 MHz.

Preferred's Alternative Rebanding Plan generally moves 800 MHz SMR GX Site-Licensed Channels within old Channels 1-120 upward to the Interleaved Channels beginning with new Channel 231. It moves North Sight's six (6) such Channels into the upper portion of the Interleaved Channels so that they are contiguous to its other Site-Licensed Channels.

B/ILT and other High Site and High Power licensees' Site-Licensed Channels within new Channels 231-480 remain on their present frequencies. Such licensees' Site-Licensed spectrum in new Channels 481-510 would be moved downward into the new Interleaved Channels on a geographic "footprint" basis only.

f. Old Channels 1-120/ New Channels 1-230.

Public Safety licensees presently in the old NPSPAC Channels are moved downward 15 MHz on a geographic "footprint" basis only.

g. Funding.

As discussed above, Preferred would assume financial responsibility for paying all of the reasonable costs directly related to its Alternative Rebanding Plan moving forward including, but not limited to, new equipment required to be purchased by Public Safety licensees now operating systems within new Channels 231-510 that would be relocated downward into new Channels 1-230. Preferred would propose to collateralize its financial rebanding commitment by providing the Commission a standby letter of credit for an amount to be negotiated with the FCC.⁷⁸

⁷⁸ Such standby letter of credit would be issued by a recognized financial institution headquartered either in the continental U.S. or in Puerto Rico.

h. 1.9 GHz Band Spectrum.

In exchange for its voluntary financial rebanding commitment, Sprint Nextel would assign its 10 MHz license in the 1.9 GHz Band for the Puerto Rico EA market to Preferred or one of its affiliates.⁷⁹

i. Negotiation Timetable.

Preferred's Alternative Rebanding Plan is a voluntary rather than involuntary approach toward reconfiguration of the 800 MHz PLMRB. Upon acceptance by the FCC of its Rebanding Plan, Preferred would retain CTO to commence negotiating voluntary Frequency Reconfiguration Agreements with the affected licensees in the Puerto Rico EA market. Preferred would request that the Commission provide it with a sixty (60)-day period for CTO to negotiate such voluntary Agreements. Following the successful negotiation of such Agreements, Preferred would propose to track the rebanding timeline for Sprint Nextel in the U.S.

D. Transition Administrator's Proposal for Adoption of an Alternative 800 MHz Band Plan and Negotiation Timetable for Puerto Rico and the U.S. Virgin Islands Economic Area

1. Methodology

In the *800 MHz Second MO&O*, the FCC found that Puerto Rico was a "unique situation distinct from other markets" due to (1) Sprint Nextel's relative lack of EA- and Site-Licensed Spectrum, (2) multiple Non-Nextel EA Authorization holders, (3) the failure of the Upper 200 Channels EA Authorization holders to relocate Site-Licensed

⁷⁹ See 800 MHz Report & Order, at ¶ 326 ("The 1.9 GHz licenses shall not be assigned to any person or entity who or which has not demonstrated to the satisfaction of the Commission that it will, and has the capacity to, assume all of Nextel's obligations hereunder.")

incumbents to the lower portion of the PLMRB.⁸⁰ Instead of focusing upon the PLMRB as a whole and its relative lack of Public Safety licenses in the old NPSPAC Channels and the considerable amount of EA- and Site-Licensed Channels to be accommodated in the ESMR Block, the TA's Alternative Rebanding Proposal sought both to minimize the number of licenses to be moved and conform to the Commission's generally applicable Rebanding Plan to the maximum extent possible.⁸¹

As a result, instead of moving Public Safety licensees downward from new Channels 231-510 to a relatively vacant new Channels 1-230 and clearing off seventy (70) Channels from the Interleaved and Expansion Band Channels thereby creating room to move the ESMR Block boundary downward in the PLMRB, the TA's Alternative Rebanding Proposal maintains the Non-ESMR and ESMR Blocks as they exist in the Commission's generally applicable Rebanding Plan.⁸²

2. Proposed Movements.

a. Expansion Band.

Desiring to clear the Guard Band of Non-ESMR and Non-ESMR Eligible Site-Licensees,⁸³ the TA determined to increase the Expansion Band by twenty (20) Channels or .5 MHz through elimination of the lower half of the Guard Band. According to the TA such modification not only would (1) provide Non-ESMR and Non-ESMR Eligible licensees with sufficient spectrum, (2) allow licensees to be cleared from the remaining portion of the Guard Band, (3) resolve combiner spacing issues, (4) provide some future system expansion, (5) not increase the number of additional reconfiguration

⁸⁰ See 800 MHz MO&O, at ¶ 32.

⁸¹ See TA Alternative Rebanding Proposal, at 4.

⁸² *Id.*, at 6.

⁸³ See TA Alternative Rebanding Proposal, at 4.

agreements requiring negotiation and still preserve a one MHz spectral separation between ESMR systems and Public safety licensees.⁸⁴

b. Relocation of Incumbents.

(1) From New Channels 511-710

The TA's Alternative Rebanding Proposal moves Non-ESMR and Non ESMR-Eligible licensees' Site-Licensed Channels downward from new Channels 551-830 to new Channels 231-470 on a geographic "footprint" basis only.

(2) From Old NPSPAC Channels

The TA's Alternative Rebanding Proposal moves Public Safety licensees presently operating in the old NPSPAC Channels (old Channels 601-830) to Preferred's frequencies in the former General Category Channels (old Channels 1-120 and new Channels 1-230) on a geographic "footprint" basis only. As noted above, the TA largely ignores the relative lack of Public Safety licenses in the old NPSPAC Channels. Upon relocating these Public Safety licensees into new Channels 1-230, the TA's Alternative Rebanding Plan would leave 177 vacant 12.5 kHz bandwidth Channels on sites in the Western Half of Puerto Rico and 119 vacant 12.5 kHz bandwidth Channels on the Eastern Half of the Island.⁸⁵

⁸⁴ *Id.*

⁸⁵ According to CTO's "800 MHz Rebanding Proposal for Puerto Rico," even after relocating all of the Public Safety licensees presently operating in the Interleaved and Guard Band Channels (new Channels 231-480) and the old NPSPAC Channels to new Channels 1-230, 173 of these Channels would remain vacant for the Western Half of Puerto Rico and 82 such Channels would remain vacant for the Eastern Half of the Island and available for future Public Safety licensees' system expansion in Puerto Rico.

(3) From Old Channels 1-120

The TA's Alternative Rebanding Proposal moves Non-ESMR and Non ESMR-Eligible licensees' Site-Licensed Channels in old Channels 1-120 to the Interleaved and Expansion Band Channels on a geographic "footprint" basis only.

c. Assignment of Frequencies in the ESMR Block.

The TA's Alternative Rebanding Plan expressly recognizes that the two hundred eighty (280) Channels it allocated to the ESMR Block for the Puerto Rico EA market is insufficient to accommodate the ESMR and ESMR-Eligible licensees' EA- and Site-Licensed three hundred eighty (380) Channels.⁸⁶ According to the TA it would resolve this considerable spectrum shortfall by apportioning the ESMR Block in accordance with the provisions set forth by the FCC in its *800 MHz Second MO&O*.⁸⁷

Under the FCC's *pro rata* apportionment approach, Sprint Nextel, North Sight and Preferred together would lose a total of fifty (50) EA-Licensed Channels and six (6) Site-Licensed Channels covering the Western Half of Puerto Rico and fifty (50) EA-Licensed Channels and thirty-one (31) Site-Licensed Channels covering the Eastern Half of the Island.

d. Timetable.

The TA proposes a ninety (90)-day mandatory negotiation period be established by the Commission for all licensees in the Puerto Rico EA market that were

⁸⁶ TA Alternative Rebanding Proposal, at ii, 6. The TA apparently would exclude High Tech Communications Services, Inc. from the ESMR Block since it failed to file an election to remain there. As noted above, given the different treatment of EA-Licensed spectrum within the Upper 200 Channels by the *800 MHz MO&O*, Preferred would recommend that the Commission afford this EA licensee a thirty (30)-day window during which it could file an ESMR Block election.

⁸⁷ *Id.*, at ii.

not previously placed into mandatory negotiations.⁸⁸ If the licensees fail to negotiate a Frequency Reconfiguration Agreement during the mandatory negotiation period, they would be placed into mediation in accordance with the procedures already in place. The TA further recommended that the FCC adopt specific dates for the timetable as part of an Order adopting an alternative rebanding plan.⁸⁹

III. CONCLUSION.

In the *800 MHz Second MO&O* the FCC recognized that much like the Southeast Region of the U.S. Puerto Rico is a unique market for purposes of SMR licensing. Moreover, in that *MO&O* the Commission indicated that due to the unusual distribution of cellular and non-cellular systems in the Southeast Region it was appropriate to expand the ESMR Block.⁹⁰ Furthermore, it indicated that subject to (1) fully accommodating Non-ESMR and Non-ESMR-Eligible licensees' Site-Licensed Channels that need to be relocated downward from the Upper 200 Channels and (2) providing a Guard Band, Puerto Rico also was a market in which expansion of the ESMR Block was appropriate.⁹¹

In formulating its Alternative Rebanding Proposal, the TA largely ignored this market's significant differences from the majority of EA markets in the U.S. and sought in its own words, to "conform the alternative band plan to the standard United States 800 MHz reconfiguration plan to the extent feasible in order to minimize disruption to licensees, particularly those that have already begun reconfiguration..."⁹² As a result, the

⁸⁸ *Id.*, at 12.

⁸⁹ *Id.*

⁹⁰ 800 MHz Second MO&O, at ¶ 29.

⁹¹ *Id.*, at ¶ 30.

⁹² TA Alternative Rebanding Proposal, at i.

TA failed to analyze the PLMRB in this EA market in its entirety and recognize the licensing imbalance between its relatively vacant NPSPAC and Public Safety Channels within the Interleave and Expansion Band Channels and the considerable number of EA-Licensed Channels that need to be accommodated within an ESMR Block.

CTO's Report, which provides the basis for Preferred's Alternative Rebanding Plan, addresses the deficiencies in the TA's approach and sets forth an alternative that both matches the 800 MHz SMR licensing realities of the Puerto Rico market and follow the Commission's guidelines set forth in its *800 MHz Second O&O* and *800 MHz Second FNPR*. Preferred therefore respectfully requests that the Commission adopts Preferred's Alternative Rebanding Plan for Puerto Rico and commence a similar proceeding for the U.S. Virgin Islands.

Respectfully submitted,

Charles M. Austin,
President

800 MHz BAND PLAN COMPARISONS

New Channels	001-230	231-470		471-510	511-550	551-830		
MHz	806	809	809.7375	815	816	817	821	824
700 MHz Public Safety Band	NPSPAC Public Safety 120 Chan	Public Safety, Hi Site SMR, Business, Industrial 240 Channels		Expansion Band 40 Ch.	Guard Band 40 Ch.	Cellular Like ESMR Block 280 Channels		Cellular A & B
MHz	851	854	854.7375	860	861	862	866	869

FCC's Final Plan

New Channels	001-230	231-470		471-530	531-550	551-830		
MHz	806	809	809.7375	815	816.5	817	821	824
700 MHz Public Safety Band	NPSPAC Public Safety 120 Chan	Public Safety, Hi Site SMR, Business, Industrial 240 Channels		Expansion Band 60 Ch.	Guard Band 20 Ch.	Cellular Like ESMR Block 280 Channels		Cellular A & B
MHz	851	854	854.7375	860	861.5	862	866	869

TA's Proposal

New Channels	001-230	231-440		441-480	481-830		
MHz	806	809	809.7375	814.2375	815.2375	821	824
700 MHz Public Safety Band	NPSPAC Public Safety 120 Chan	Public Safety, Hi Site SMR, Business, Industrial 210 Channels		Guard Band 40 Ch.	Cellular Like ESMR Block 350 Channels		Cellular A & B
MHz	851	854	854.7375	859.2375	860.2375	866	869

PCSI's Proposal

****Please note: NPSPAC's 120 channels translate to 230 channels at half bandwidth (12.5 kHz)****

Exhibit A

Alternative Reconfiguration Plan For Puerto Rico and the U.S. Virgin Islands

Prepared by Concepts To Operations, Inc.



**Alternative
Reconfiguration Plan
For
Puerto Rico and the
U.S. Virgin Islands**

Prepared for

Preferred Communication Systems, Inc.

Prepared by

Concepts To Operations, Inc.

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August 6, 2008

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"PROFESSIONAL PUTTING GOOD IDEAS TO WORK"



August 6, 2008

Charles M. Austin
President
Preferred Communication Systems, Inc.
400 East Royal Lane, Suite N24
Irving, TX 75039

Dear Mr. Austin:

Concepts To Operations is pleased to present to PCSI the "Alternative Reconfiguration Plan for Puerto Rico and the U.S. Virgin Islands" Final Report as contracted.

In order to formulate the "Alternative Reconfiguration Plan" CTO has reviewed the present 800 MHz database at the FCC. The proposed methodology outlined in the report is compatible with the letter and spirit of rebanding as formulated by the FCC.

If you have any questions or need more information I can be reached at 410-224-8911.

Sincerely,

Stanley I. Cohn,
Executive Vice President

SIC/arc

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SECTION I – INTRODUCTION

Concepts To Operations, Inc. (CTO) was retained by Preferred Communication Systems, Inc. to analyze the present 800 MHz data base and prepare an "800 MHz Rebanding Alternative Methodology for Puerto Rico and the U.S. Virgin Islands".

The FCC data base was reviewed as well as available rebanding documents (FCC Report and Orders, etc. as well as additional filings presented to the FCC by other parties).

Concepts To Operations, Inc.

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SECTION II – PRESENT FCC DATA

In Blocks D, DD, E, EE, F & FF (851 – 854.750 MHz) Preferred Communication Systems Inc. has licenses for 42 GX channels which would move to the ESMR Block.

All of the EA licenses in these Blocks and those GX licenses of auction winners would also move to the ESMR Block.

To accommodate these EA licensees in the upper portion of the band requires the band of 6 MHz vacated (866/821 to 869/824 MHz) by NPSPAC and additional channels below 866/821 MHz that would need relocation.

To accommodate all but the FF Block would require the band 865.875/820.875 MHz to 869/824 MHz. To accommodate the 5 channels, in the range immediately below these, would have to be relocated to a lower portion of the ESMR Band. This will require the ESMR Band to expand to frequencies below 861/816 MHz to accommodate the FF Block and the additional spectrum for relocating the 5 channels mentioned above.

The public safety licenses in the NPSPAC, general category, and interleaved spectrum would all be relocated to the 851 – 854 MHz band. This band would accommodate all present public safety users and would have sufficient spectrum for future growth.

The present Hi-site band would no longer be used by public safety and would have 210 channels.

Thus the lower portion of the ESMR Band would be moved to 860.25/815.25 MHz. A 1 MHz Guard Band would then be 859.25/814.25 MHz to 860.25/815.25 MHz.

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SECTION III – ALTERNATE REBANDING PLAN

The proposed Reconfiguration Plan can be summarized as follows:

1. Clear 851 – 854 MHz: Move present non-public safety licensees to either 854 – 860 MHz if “Hi-site” or to 862 – 869 MHz if “Cellular like ESMR”.
2. Move 866 – 869 MHz (NPSPAC) down 15 MHz to 851 – 854 MHz. If more than 10% (or 23 channels) are not used in this reconfiguration, move public safety users in 854 - 861 MHz to the 851 – 854 MHz band such that 23 channels (10%) remain for future expansion.
3. All non-public safety licensees in Interleaved Category (854.375 – 859.250 MHz) stay on present frequencies unless they are ESMR.
4. The General Category license in 854 – 854.75 MHz (Hi-site SMR, Business, and Industrial) stay at present frequencies. Public Safety licensees in this band move to 851 – 854 MHz to channels that are available from 2 & 3 above.
5. The Hi-site licensees in the 859.25 – 860.25 MHz band move to the 854 – 859.25 MHz band.
6. The cellular like ESMR licensees move to 860.25 – 869 MHz band.
7. Make 859.25 – 860.25 MHz new Guard Band. Expansion Band not needed for Public Safety.
8. Use 860.25 – 869 MHz for ESMR. No Expansion Band is needed because of vacant spectrum left for Public Safety in 851 – 854 MHz and for High-site SMR, Business, and Industrial in 854 – 859.25 MHz.

Following the above steps for Public Safety, a total of approximately 104 channels in the 851 – 854 MHz band would be vacant in Puerto Rico and the U.S. Virgin Islands and could be used for future growth as well as the newly allocated 700 MHz narrowband and wideband Public Safety channels.

SECTION IV – CONCLUSION

The proposed plan provides for:

- A consolidated Public Safety (NPSPAC and non-NPSPAC) exclusive 6 MHz band with sufficient spectrum which can support future growth.
- Non-Public Safety Hi-site SMR, Business, and Industrial licensees would be provided with 10.5 MHz which can accommodate all present users and allow for some future growth.
- Elimination of requirement for an Expansion Band because of sufficient spectrum availability for Hi-site users.
- A Guard Band of 2 MHz separating Hi-site and ESMR licensees.
- An ESMR Block of 17.5 MHz which should support all EA licensees.

The current and proposed band configurations are shown below.

Channels	001-120	121-360			361-400	401-440	441-600	601-720	
MHz	806	809	809.7375		815	816	817	821	824
	Move	Stay*	Stay*		Move	Stay		Move	
700 MHz Public Safety Band	General Category 150 Channels 7.5 MHz		Interleaved Spectrum 80 SMR, 50 Business, 50 Industrial, 70 Public Safety 250 Channels 12.5 MHz			ESMR Block 200 Channels 10 MHz		NPSPAC Public Safety 230 Chan 6 MHz	Cellular A & B
MHz	851	854	854.75		860	861		866	869
MHz	806	809	809.75		815	816		821	824
700 MHz Public Safety Band	NPSPAC and other Public Safety 230 Chan 6 MHz	HI Site SMR, Business, Industrial 210 Channels 10.5 MHz			Guard Band**	Cellular Like ESMR Block 350 Channels 17.5 MHz			Cellular A & B
MHz	851	854	854.75		859.25	860.25		866	869

* Except for public safety.

** No public safety or (Critical Infrastructure & Industry) CII licensee may be involuntarily relocated to occupy the Guard Band.

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Exhibit B

800 MHz License Chart for Puerto Rico Market

ABBREVIATION COMPANY NAME

AB	American Beeper
AER	Aeronautical Radio
ALCO	ALCO Corporation
AMER	American Machinery, Inc.
ASC	Aeromed Services Corp.
BARR	Don Barr
BRDS	Betterroads Asphalt Corp.
CAL	Calypso Communications, L.L.C.
CARR	Indieras (rubias) Bo. Carrizales
CC	Choice Communications, L.L.C.
CCI	Crown Castle International
CDC	Caribbean Digital Communications
CEN	Centro De Comunicaciones De Puerto Rico
CIEC	Communications & Industrial Electronics Corp.
CLC	Communications Leasing Corp.
DMC	Demaco Corporation
EMI	Estilo Moderno
FS	Freddy Salado
FDEX	Federal Express Corp.
GAR	Garland, George
HERB	Clinton F. Herby/John Herby/ Martha Herby
HOV	Hovensa, L.L.C.
HT	High Tech Communications
HILL	Hill Construction Co.
JAY	Jays Electronics, Inc.
JD	Jose Davila
JLG	Jose L. Gonzalez
LAZ	Lazaro Canto
LIB	Liberty Custom Forms
MAG	Magical Cruise Company Limited
MOB	Mobile & Portable Comm., Ltd.
MOD	Estilo Moderno
N	NEXTEL
NS	North Sight Communications
NWS	Northwest Security Management, Inc.
PREPA	Puerto Rico Elec. Power Authority
PRIC	Puerto Rico Island Communications
PSSI	Professional Security Support
RA	R A Electronic

RR	Richard Raabe
SELL	Sell, Clyde
TSP	Trunked Systems of Puerto Rico
TUA	Tua, Gustavo
WCCE	Warner Chilcot
WSP	Wireless Services of Puerto Rico

CH#	W	E	VI	MHz	CH#	W	E	VI	MHz
151	HT	HT		854.763	201	PRIC	LD	LR	856.012
152	HT	HT		854.788	202	TUA	RA	BARR	856.037
153	HT	HT		854.813	203	PRIC	RA	BARR	856.062
154	HT	MOB		854.838	204	PRIC	RA	RR	856.087
155	CCI		HR	854.863	205	PRIC	RA	AB	856.112
156	CLC			854.888	206	JO	RA	AB	856.137
157	PREPA	PREPA		854.913	207	JO	PRIC	AB	856.162
158		PREPA		854.938	208	JO	PRIC	AB	856.187
159	WSP	WSP	WSP	854.963	209	JO	PRIC	AR	856.212
160	WSP	WSP	WSP	854.988	210	JO	PRIC	AB	856.237
161	HT	HT		855.013	211	CIEC	PRIC	AB	856.262
162	CLC	LM		855.038	212	PREPA	PREPA	HOV	856.287
163	HT	HT		855.063	213		PREPA		856.312
164	WSP	PSSI		855.088	214	CCI			856.337
165		BRDS		855.113	215	PREPA	PREPA	HOV	856.362
166	PREPA			855.138	216	PREPA	PREPA		856.387
167		BRDS		855.163	217	PREPA	PREPA	HOV	856.412
168	PREPA	PREPA	MON	855.188	218	CIEC	PRIC	AB	856.437
169	WSP	WSP	WSP	855.213	219	CIEC	PRIC	AB	856.462
170	GAR	WSP	HO	855.238	220	CIEC	PRIC	AB	856.487
171		ASC		855.263	221	CIEC	PRIC	AB	856.512
172	HT	HT		855.288	222	CLC	PRIC	AB	856.537
173	HT	HT		855.313	223	CLC	JO	AB	856.562
174	HT			855.338	224	CLC	JO	AB	856.587
175	PREPA	PREPA		855.362	225	CLC	JO	AB	856.612
176	PREPA	PREPA		855.387	226	CLC	JO	JAY	856.637
177	PREPA	PREPA		855.412	227	CLC	JO	JAY	856.662
178			HOV	855.437	228	CLC	JO	JAY	856.687
179	RA	WSP	GAR	855.462	229	CLC	JO	JAY	856.712
180	RA	WSP	GAR	855.487	230	CLC	JO	JAY	856.737
181	HT	HT		855.512	231	CLC	JO	CC	856.762
182	HT	HT		855.537	232	HT	HT		856.787
183	HT			855.562	233	HT	CLC		856.812
184	HT	HT		855.587	234	ALCO		CC	856.837
185		PREPA		855.612	235	INDEX			856.862
186		PREPA		855.637	236		HER		856.887
187	PREPA	PREPA		855.662	237		HER	MAG	856.912
188		PREPA	HOV	855.687	238	CLC	JO	CC	856.937
189	RA	WSP	HERB	855.712	239	CLC	JO	CC	856.962
190	RA	WSP	HERB	855.737	240	CLC	JO	CC	856.987
191	HT	CLG		855.762	241	CLC	JO	CC	857.012
192	HT	HT	MAG	855.787	242	CLC	JO	CC	857.037
193	HT	HT		855.812	243	CLC	JO	CC	857.062
194		PSSI		855.837	244	CLC	CIEC	CC	857.087
195	CCI			855.862	245	CLC	CIEC	CC	857.112
196	CLC	LM		855.887	246	CLC	CIEC	CC	857.137
197	BRDS	HER		855.912	247	CLC	CIEC	CC	857.162
198		PREPA	HOV	855.937	248	CLC	CLC	CC	857.187
199	RA	WSP	HERB	855.962	249	CARR	CLC	CC	857.212
200	PRIC	SELL	HERB	855.987	250	CARR	CLC	CC	857.237

CH#	W	E	VI	MHz
251	CARR	CLC	CC	857.262
252	PREPA	PREPA	MAC	857.287
253	PREPA	PREPA		857.312
254	CCI			857.337
255	PREPA	PREPA	MAC	857.362
256	PREPA	PREPA		857.387
257	PREPA	PREPA	MAC	857.412
258	CARR	CLC	CC	857.437
259	CARR	CLC	CC	857.462
260	CCI	CLC	CC	857.487
261	CCI	CLC	CC	857.512
262	CCI	CLC	CC	857.537
263	CCI	CLC	CC	857.562
264	CCI	CLC	CC	857.587
265	CCI	CLC	CC	857.612
266	CCI	CLC	CC	857.637
267	CCI	CLC	CC	857.662
268	CCI	CLC	NS	857.687
269	CCI	CLC	NS	857.712
270	CCI	CLC	NS	857.737
271	CCI	CLC	NS	857.762
272	HT	HT	MAC	857.787
273	CCI			857.812
274	HT			857.837
275	FOREX			857.862
276				857.887
277				857.912
278	CCI	CLC	NS	857.937
279	CCI	CLC	NS	857.962
280	CCI	CLC	NS	857.987
281	CCI	LAX	NS	858.012
282	CCI	LAX	NS	858.037
283	CCI	LAX	NS	858.062
284	CCI	LAX	NS	858.087
285	CCI	LAX	NS	858.112
286	CCI	CEN	NS	858.137
287	CCI	CEN	NS	858.162
288	CCI	CEN	NS	858.187
289	CCI	CEN	NS	858.212
290	CCI	CEN	NS	858.237
291	CCI	CCI	NS	858.262
292	PREPA	PREPA	MAC	858.287
293	PREPA	PREPA		858.312
294	CCI			858.337
295	PREPA	PREPA	MAC	858.362
296	PREPA	PREPA		858.387
297	PREPA	PREPA	MAC	858.412
298	CCI	CCI	NS	858.437
299	CCI	CCI	NS	858.462
300	CCI	CCI	NS	858.487
301	CCI	CCI	NS	858.512
302	NS	CCI	NS	858.537
303	NS	CCI	NS	858.562
304	NS	CCI	NS	858.587
305	NS	CCI	NS	858.612
306	NS	CCI	NS	858.637
307	NS	CCI	NS	858.662
308	NS	CCI	NS	858.687
309	NS	CCI	NS	858.712
310	NS	CCI	NS	858.737
311	NS	CCI	NS	858.762
312	HT			858.787
313	ALCO	ALCO	MAC	858.812
314	ALCO	MOD		858.837
315	FOREX			858.862
316				858.887
317				858.912
318	NS	CCI	NS	858.937
319	NS	CCI	NS	858.962
320	NS	CCI	NS	858.987
321	NS	CCI	NS	859.012
322	NS	CCI	NS	859.037
323	NS	CCI	NS	859.062
324	NS	CCI	NS	859.087
325	NS	CCI	NS	859.112
326	NS	CCI	NS	859.137
327	NS	CCI	NS	859.162
328	NS	CCI	NS	859.187
329	NS	CCI	NS	859.212
330	NS	CCI	NS	859.237
331	NS	CCI	NS	859.262
332	PREPA	PREPA	MAC	859.287
333	PREPA	PREPA		859.312
334	CCI			859.337
335	PREPA	PREPA	MAC	859.362
336	PREPA	PREPA		859.387
337	PREPA	PREPA	MAC	859.412
338	NS	CCI	NS	859.437
339	NS	CCI	NS	859.462
340	NS	CCI	NS	859.487
341	NS	CCI	NS	859.512
342	NS	CCI	NS	859.537
343	NS	CCI	NS	859.562
344	NS	TSP	NS	859.587
345	NS	TSP	NS	859.612
346	NS	TSP	NS	859.637
347	NS	TSP	NS	859.662
348	NS	TSP	NS	859.687
349	NS	TSP	NS	859.712
350	NS	TSP	NS	859.737
351	NS	TSP	NS	859.762
352	HT		MAC	859.787
353	HT			859.812
354	HT			859.837
355	HT	FOREX		859.862
356	HT	FOREX		859.887
357	CCI			859.912
358	NS	TSP	NS	859.937
359	NS	TSP	NS	859.962
360	NS	TSP	NS	859.987
361	NS	TSP	NS	860.012
362	NS	TSP	NS	860.037
363	NS	TSP	NS	860.062
364	NS	TSP	NS	860.087
365	NS	NS	NS	860.112
366	NS	NS	NS	860.137
367	NS	NS	NS	860.162
368	NS	NS	NS	860.187
369	NS	NS	NS	860.212
370	NS	NS	NS	860.237
371	NS	NS	NS	860.262
372	PREPA	PREPA	MAC	860.287
373	CCI	PREPA		860.312
374	CCI		MAC	860.337
375	PREPA	PREPA	MAC	860.362
376	PREPA	PREPA		860.387
377	PREPA	PREPA	MAC	860.412
378	NS	NS	NS	860.437
379	NS	NS	NS	860.462
380	NS	NS	NS	860.487
381	NS	NS	NS	860.512
382	NS	NS	NS	860.537
383	NS	NS	NS	860.562
384	NS	NS	NS	860.587
385	NS	NS	NS	860.612
386	NS	NS	NS	860.637
387	NS	NS	NS	860.662
388	NS	NS	NS	860.687
389	NS	NS	NS	860.712
390	NS	NS	NS	860.737
391	NS	NS	NS	860.762
392	HT			860.787
393	HT			860.812
394	PREPA	FOREX		860.837
395	FOREX		FOREX	860.862
396	FOREX			860.887
397	FOREX			860.912
398	NS	FS	FS	860.937
399	NS	FS	FS	860.962
400	NS	FS	FS	860.987